

CHOCTAW NATION OF OKLAHOMA  
v.  
MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-143-A

Decided February 26, 1991

Appeal from a decision concerning funding for operation and maintenance of an Indian school for FY 1990.

Affirmed.

1. Administrative Procedure: Burden of Proof--Indians: Education and Training: Tribally Controlled Schools

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

2. Bureau of Indian Affairs: Administrative Appeals: Generally

A Bureau of Indian Affairs Area Director is vested with jurisdiction to decide an appeal arising under 25 CFR Part 2 "if the subject of appeal is a decision by a person under the authority of that Area Director." 25 CFR 2.4(a).

APPEARANCES: Bob Rabon, Esq., Hugo, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Choctaw Nation of Oklahoma seeks review of a July 30, 1990, decision of the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), holding that he lacked authority to alter the FY 1990 funding allocation for operation and maintenance (O&M) of the Jones Academy. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellant operates the Jones Academy pursuant to grant No. GTG09001, awarded under the Tribally Controlled Schools Act of 1988, 25 U.S.C.

§ 2503 (1988) (P.L. 100-297). 1/ On August 23, 1989, the Office of Construction Management, Department of the Interior, 2/ published a notice entitled "Allocation of Bureau of Indian Affairs Operations & Maintenance (O&M) Program Using a Formula Methodology." 54 FR 35085 (Aug. 23, 1989). The notice stated that development of an O&M formula for application to BIA funded schools had been mandated by Congress and was intended to provide, inter alia, "[a] means for allocating resources in an equitable manner for educational facilities" beginning in FY 1990. 3/

Appellant was informed sometime prior to May 21, 1990, apparently orally, that its O&M funding for the Jones Academy for FY 1990 would be \$39,773 less than it had been in FY 1989. Appellant states that the "decision was made by the Muskogee Area Facilities Management Office, Albuquerque Branch of Operations and Maintenance, and the Office of Construction Management" (Appellant's May 21, 1990, Notice of Appeal to the Area Director at 1) .

On May 21, 1990, appellant appealed to the Area Director, stating that its O&M funding had been reduced a total of \$126,993 since appellant first contracted to operate the school in 1984. Appellant argued that, under 25 U. S. C. § 2503(g), "[g]rants \* \* \* may not be terminated, modified, suspended, or reduced only for the convenience of the administering agency." It contended that the funding reduction would preclude it from maintaining the standards required by P.L. 100-297. It also contended that its building inventories had not been updated since 1984 and contained errors. Finally, appellant stated that it was seeking to be funded at its 1984 level of \$392,500.

On July 30, 1990, the Area Director responded, stating:

As Area Director, I have no authority to review your appeal because I lack authority to make adjustments. Your appeal is

---

1/ All further references to the United States Code are to the 1988 edition.

Apparently, appellant contracted to operate the school in 1984 pursuant to an Indian Self-Determination Act contract and later elected to convert the contract to a grant, as authorized by 25 U.S.C. § 2508(b).

2/ The Office of Construction Management is not a part of BIA; it is under the jurisdiction of the Assistant Secretary - Policy, Management and Budget. See 112 DM (Departmental Manual) 3.1.

3/ Prior to publication of the final notice, a proposed formula was published, 53 FR 29282 (Aug. 3, 1988), and four tribal consultation meetings were held.

4/ A June 19, 1990, memorandum from the Area Director to the Deputy Director, Office of Construction Management, states that appellant's inventory was updated on April 26 and 27, 1990, by an Area Office employee and an individual working for appellant under contract. The update resulted in an increase of \$10,338 in appellant's "Facility Maintenance Requirement." Although it is not entirely clear, this new figure appears to have been intended for prospective use only.

based on Jones Academy O&M formula funding calculations for FY 90 which were given to you during a recent trip to Facilities Management and Construction Center (F.M.C.C.) in Albuquerque, New Mexico. [5/]

We consulted with the Office of Construction Management in Washington, D.C., and F.M.C.C. in Albuquerque, New Mexico, and are providing the following information on budget allocations. The operations and maintenance budget for the Bureau of Indian Affairs is funded as part of the appropriations by Congress for the BIA Facilities Program. For the first time, for FY 90, O&M funds were allocated to school locations using the O&M formula developed in response to Congressional Appropriations Committee directive. The O&M formula allocates available appropriations in an equitable manner based on actual inventories of buildings and equipment. The formula must, however, operate within the level of appropriations provided by Congress. Jones Academy received a proportionate or equitable share of resources compared with other facilities from within the FY 90 appropriations.

Appellant's notice of appeal from this letter was received by the Board on August 30, 1990. No briefs were filed.

### Discussion and Conclusions

In its notice of appeal, appellant reiterates the arguments it made before the Area Director, concluding: "These unconscionable decisions to reduce funds for education of Indian children must be reversed. Funds for Jones Academy operations and maintenance program should be restored to their FY 1984 level of \$392,500.00."

[1] In appeals arising under 25 CFR Part 2, an appellant bears the burden of proving that the decision complained of is erroneous or not supported by substantial evidence. E.g., Hays v. Muskogee Area Director, 18 IBIA 380 (1990). The decision on appeal here is the Area Director's conclusion that he lacked authority to make adjustments to appellant's O&M funding. In essence, the Area Director concluded that he lacked jurisdiction over appellant's appeal.

[2] Under 25 CFR 2.4(a), an Area Director is authorized to decide an appeal only "if the subject of appeal is a decision by a person under the authority of that Area Director." Appellant has not alleged, much less shown, that the decision it was attempting to appeal had been made by an official under the authority of the Area Director; accordingly, it has not

---

5/ The Facilities Management and Construction Center, although organizationally within BIA, reports to the Office of Construction Management, through the Office of Facilities Management. See 130 DM 2 (Chart); 130 DM 7 (Mar. 4, 1988; Nov. 21, 1990).

shown that the Area Director erred in concluding that he lacked jurisdiction over the appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Muskogee Area Director's July 30, 1990, decision is affirmed.

---

Anita Vogt  
Administrative Judge

I concur:

---

Kathryn A. Lynn  
Chief Administrative Judge